CHE AHMAD HJ CHE DAUD & ORS

v.

DCB BANK BHD

HIGH COURT MALAYA, KOTA BHARU
MUHAMMAD KAMIL AWANG J
[CIVIL SUIT NO: 22-72-1997]
14 DECEMBER 2000

LEGAL PROFESSION: *Professional independence - Counsel acted for all parties concerned - Whether counsel contravened r. 5(a) Legal Profession (Practice and Etiquette) Rules 1978*

This was a preliminary objection raised by the respondents/plaintiffs that the appellant's counsel had contravened r. 5(a) of the Legal Profession (Practice and Etiquette) Rules 1978 ('the Rules 1978') by acting for all the parties concerned.

Held:

[1] It is clear that r. 5(a) of the Rules 1978 prohibits a counsel to act for all parties in a case. This is because there will be a conflict of interest and the counsel will not be able to maintain professional independence. Also, it will not be in the best interest in the administration of justice. The appellant's counsel herein represented all the parties concerned in the preparation of the loan agreement. That was invalid by virtue of r. 5(a) of the Rules 1978 as it would be difficult for the said counsel to maintain its professional independence.

[Preliminary objection upheld; application dismissed with costs.]

Case(s) referred to:
Ex parte Vicnandan Maria Das [2000] 3 CLJ 808 ***(foll)***

Legislation referred to:
Legal Profession (Practice and Etiquette) Rules 1978, r. 5(a)
Rules of the High Court 1980, O. 14 r. 1(4)

For the appellant/defendant - Wan Azman Wan Ahmad; M/s Lua & Mansor
For the respondents/plaintiffs - Azmat Azlin Hj Ahmad; M/s Azmat Azlin & Assoc

Reported by Usha Thiagarajah

JUDGMENT

Muhammad Kamil Awang J:

At the onset of the hearing of this appeal (encl. 13), learned counsel for the respondents/plaintiffs raised preliminary objection on three issues:

a) the appellant's counsel had contravened r. 5(a) of the Legal Profession (Practice and Etiquette) Rules 1978;

b) the affidavit of Syed Abd Hamid Syed dated 18 April 1998 had contravened O. 14 r. 1(4) of the Rules of the High Court 1980; and

c) the summons in chambers dated 18 April 1998 had given no grounds as prescribed in form 62, Rules of the High Court 1980.

The appellant bank granted an overdraft of RM500,000 to H2 Phones Sdn. Bhd. ('the company') and by the agreement thereof dated 22 December 1993 (exh. AHD1), the seven directors were signatories on behalf of the company. Subsequently these directors were replaced by the respondents. The appellants' counsel M/s Lua & Mansor acted for all the parties in the preparation of the agreement.

Later on default judgments were obtained by the appellant against the respondents on 5 January 1997 (exh SAH1 and SAH2). The respondents alleged that the judgement obtained were void as the counsel had acted for all the parties concerned and thus, had contravened r. 5(a) of the Legal Profession (Practice and Etiquette) Rules 1978.

Rules 5(a) provides:

> 5. No advocate and solicitors to accept brief if difficult to maintain professional independence.
>
> a) No advocate or solicitor shall accept a brief is such acceptance renders or would render it difficult for him to maintain his professional independence or is incompatible with the best interest of the administration of justice.

It is clear that the rule prohibits a counsel to act for all the parties in a case. Obviously there is a conflict of interest, and the counsel is not able to maintain professional independence and it is not in the best interest of the administration of justice.

In a very recent case, *Ex parte Vicnandan Maria Das* [2000] 3 CLJ 808, the court held that –

KP who had acted for the purchaser in the sale and purchase agreement could not, legally, act for the applicant in the instant application. There would be a conflict of interest. KP should not, having regard to r. 5(a) of the Legal Profession (Practice and Etiquette) Rules 1978, have accepted the brief from the applicant. It would be difficult for KP to maintain his professional independence.

The court dismissed the case and ordered that costs to be borne by the counsel of the applicant personally.

In the instant case, a counsel from M/s Lua & Mansor representeed all the parties in the agreement. When the respondents had defaulted in the repayment of the loan, the appellant bank represented by M/s Lua & Mansor had entered a default judgment against the 1st and 4th respondents. As a result the respondents filed a writ of summons against the 2nd, 3rd and 4th in O.S. 24-184-1996 which was invalid by virtue of r. 5(a) of Rules. It would be difficult for M/s Lua & Mansor to maintain its professional independence.

In the circumstances, I would uphold the objection, and dismissed the application with costs.

I do not think it is necessary for me to deal with the other issues (b) and (c).